Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 81-178)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 81-82 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
June 15, 1981	$0.059773
June 16, 1981	.060496
June 17, 1981	.060386
June 18, 1981	.059809
June 19, 1981	.059277
Belgium franc:	
June 15, 1981	$0.025961
June 16, 1981	.026137
June 17, 1981	.026110
June 18, 1981	.025773
June 19, 1981	.025694
Brazil cruziero:	
June 15–16, 1981	$0.011346
June 17–19, 1981	.011151
People's Republic of China yuan:	
June 15, 1981	$0.564207
June 16–18, 1981	.571037
June 19, 1981	.568214

Denmark krone:	
June 15, 1981	$0.135318
June 16, 1981	.135980
June 17, 1981	.135474
June 18, 1981	.134935
June 19, 1981	.134093
Finland markka:	
June 15, 1981	$0.225225
June 16, 1981	.226860
June 17, 1981	.226912
June 18, 1981	.225378
June 19, 1981	.224090
France franc:	
June 15, 1981	$0.178476
June 16, 1981	.179340
June 17, 1981	.179179
June 18, 1981	.176678
June 19, 1981	.177384
Germany deutches mark:	
June 15, 1981	$0.426257
June 16, 1981	.425985
June 17, 1981	.425767
June 18, 1981	.421550
June 19, 1981	.420610
Ireland pound:	
June 15, 1981	$1.5460
June 16, 1981	1.5500
June 17, 1981	1.5575
June 18, 1981	1.5430
June 19, 1981	1.5310
Italy lira:	
June 15, 1981	$0.000855
June 16, 1981	.000853
June 17, 1981	.000856
June 18, 1981	.000848
June 19, 1981	.000843
Netherlands guilder:	
June 15, 1981	$0.382995
June 16, 1981	.384615
June 17, 1981	.383289
June 18, 1981	.379867
June 19, 1981	.378358

New Zealand dollar:	
June 15, 1981	$0.8635
June 16, 1981	.8660
June 17, 1981	.8620
June 18, 1981	.8600
June 19, 1981	.8556
Norway krone:	
June 15, 1981	$0.170794
June 16, 1981	.170853
June 17, 1981	.170721
June 18, 1981	.169420
June 19, 1981	.168464
Portugal escudo:	
June 15, 1981	$0.015911
June 16, 1981	.016013
June 17, 1981	.016598
June 18, 1981	.015974
June 19, 1981	.015810
Republic of South Africa rand:	
June 15, 1981	$1.1605
June 16, 1981	1.1617
June 17, 1981	1.1580
June 18, 1981	1.1535
June 19, 1981	1.1510
Spain peseta:	
June 15, 1981	$0.010592
June 16, 1981	.010678
June 17, 1981	.010689
June 18, 1981	.010610
June 19, 1981	.010499
Sweden krone:	
June 15, 1981	$0.200000
June 16, 1981	.198906
June 17, 1981	.199402
June 18, 1981	.198570
June 19, 1981	.198216
Switzerland franc:	
June 15, 1981	$0.489117
June 16, 1981	.487686
June 17, 1981	.488281
June 18, 1981	.482625
June 19, 1981	.483559

United Kingdom pound:	
June 15, 1981	$2.0020
June 16, 1981	1.9948
June 17, 1981	1.9970
June 18, 1981	1.9760
June 19, 1981	1.9720

(LIQ-03-01 O:C:E)

Date: June 19, 1981.

KENNETH A. RICH,
Chief,
Customs Information Exchange.

Correction Notice

(19 CFR Parts 103, 152, 175)

Customs Regulations Relating to Availability of Information; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects the text of a final rule on the Customs Regulations relating to the availability of information that was published as T.D. 81-168 in the Federal Register on June 24, 1981 (46 FR 32564).

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Disclosure Law Branch (202-566-8681).

The following corrections are made in the final rule document:

1. On page 32566, center column, the address of public reading room in Region V—New Orleans, is corrected to read "Room 302, 423 Canal Street, New Orleans, Louisiana 70130."

2. On page 32567, right-hand column, section 103.5(b)(1), the name "Freedom of Information and Privacy Branch" is corrected to read "Disclosure Law Branch."

3. On page 32570, left-hand column, section 103.8(a)(3) is corrected to read "The need for consultation, * * *, or within offices of the United States Customs Service * * *"

Dated: June 30, 1981.

B. J. FRITZ
Director, Regulations Control
and Disclosure Law Division.

[Published in the Federal Register July 7, 1981 (46 F.R. 35084)]

General Notice

U.S. Customs Service

(19 CFR Part 12)

Proposed Customs Regulations Amendments Relating to the Importation of Certain Fresh, Chilled, or Frozen Beef

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Trade Agreements Act of 1979 made numerous changes to various provisions of law presently administered in whole or in part by the Customs Service. One of those changes relates to the importation of certain fresh, chilled, or frozen beef. This document proposes to add a new section to the Customs Regulations to require a certification, by an official of the exporting country, stating that certain fresh, chilled, or frozen beef meets U.S. Department of Agriculture specifications for high-quality beef.

DATES: August 8, 1981.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Information Division, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Duty Assessment Division, Office of Trade Operations, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–8651).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 144 (the "Act") made numerous changes to various provisions of law administered in whole or in part by the Customs Service.

Title V of the Act provides for the implementation of certain tariff concessions negotiated in the Multilateral Trade Negotiations ("MTN"). Section 506 of Title V amended Schedule 1, part 2, sub-

part B, Tariff Schedules of the United States ("TSUS"), by deleting item 107.60 and inserting items 107.61, 107.62, and 107.63, relating to certain fresh, chilled, or frozen beef.

Prior to the Act, fresh, chilled, or frozen beef and veal (except for sausages) valued over 30 cents per pound were classified under TSUS item 107.60. The rate of duty was 10 percent ad valorem. Before the Act, portion control cuts from Canada were entered under TSUS item 107.60, which was not covered by the Meat Import Act (Pub. L. 88–482, 19 U.S.C. 1202). Section 506 of the Act created a separate tariff classification for portion control cuts meeting high-quality U.S. specifications. Section 704 of the Act includes this new tariff classification in the coverage of the Meat Import Act.

In bilateral negotiations with Canada, the United States agreed to reduce the duty on high-quality portion control cuts of beef from 10 percent to 4 percent ad valorem on condition that (1) the concession apply only to portion control cuts which meet high-quality specifications (7 CFR 2853.106 (a) and (b)) and (2) meat entering under the concession would be counted against the exporter's allocation under the U.S. Meat Import Program.

Under the provisions of new TSUS item 107.61, a certification is required from an official of the exporting country prior to exportation stating that the fresh, chilled, or frozen beef meets the specifications for high-quality beef contained in regulations issued by the U.S. Department of Agriculture (7 CFR 2853.106 (a) and (b)). The certification is to be in a form required by regulations issued by the Secretary of the Treasury after consultation with the Secretary of Agriculture. This proposal was developed as a result of meetings between personnel of Customs and the Department of Agriculture.

This document proposes to amend Part 12, Customs Regulations (19 CFR Part 12), by adding a new section 12.9a to require a certification, prior to exportation, by an official of the exporting country, stating that the beef meets U.S. Department of Agriculture specifications for high-quality beef (7 CFR 2853.106 (a) and (b)). The requirements of the proposed section would be in addition to those requirements contained in U.S. Department of Agriculture regulations in 9 CFR 327.4 relating to meat inspection certifications.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); section 624, 46 Stat. 759 (19 U.S.C. 1624); Pub. L. 96–39, 93 Stat. 252.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be avail-

able for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Information Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

EXECUTIVE ORDER 12291

The proposed regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Any economic impact flows directly from the Trade Agreements Act of 1979 and not the proposed implementing regulations. The proposal is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from entities through comments, either formal or informal.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605b) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

PROPOSED AMENDMENTS

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), in the following manner:

PART 12—SPECIAL CLASSES OF MERCHANDISE

It is proposed to amend Part 12 by adding a new section 12.9a and heading to read as follows:

CERTAIN FRESH, CHILLED, OR FROZEN BEEF

12.9a CERTIFICATION.

The foreign official's meat-inspection certificate required by U.S. Department of Agriculture regulations (9 CFR 327.4) shall be mod-

ified to include the following certification when fresh, chilled, or frozen beef is to be entered under the provisions of item 107.61, Tariff Schedules of the United States (TSUS). The certification shall be made, prior to exportation of the beef, by an official of the government of the exporting country. The requirements of this section shall be in addition to those requirements contained in 9 CFR 327.4. Appropriate officials of the exporting country should consult with the U.S. Department of Agriculture as to the beef grades or standards within their country that satisfy the certification requirement. Exporters or importers of beef to be entered under the provisions of item 107.61, TSUS, should consult with the U.S. Department of Agriculture prior to exportation in order to insure that the beef will satisfy the certification requirements. This certification is relevant only to U.S. Customs tariff classification and is not applicable to marketing of beef under U.S. Department of Agriculture grading standards, a matter within U.S. Department of Agriculture's jurisdiction.

CERTIFICATION

I hereby certify to the best of my knowledge and belief that the herein described fresh, chilled, or frozen beef, meets the specifications for high-quality beef prescribed in regulations issued by the U.S. Department of Agriculture (7 CFR 2853.106 (a) and (b)).

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: June 25, 1981.
JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register July 2, 1981 (46 F.R. 34598)]

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1266)

THE UNITED STATES *v.* SIEMENS AMERICA, INC., AND SIEMENS CORPORATION

1. CLASSIFICATION—SURGE VOLTAGE PROTECTORS.

Judgment of United States Customs Court (now United States Court of International Trade) that imported surge voltage protectors (SVPs) containing promethium 147 were not classifiable under item 709.66, TSUS, as "apparatus based on the use of radiations from radioactive substances" is affirmed.

2. ID.—ELECTRONIC TUBES.

Judgment of court below that imported SVPs were properly classifiable under item 687.60, TSUS, as "electronic tubes" is reversed and this matter is remanded for further action consistent with this opinion.

3. LEGISLATIVE INTENT.

To determine legislative intent, one must first look to statutory language itself.

4. ID.

Plain meaning of "based on" language of item 709.66 evinces Congressional intent to limit that provision to goods in which use of radiation is a fundamental and essential constituent.

5. FINDINGS OF FACT.

Finding of fact of court below will not be disturbed unless the finding is clearly contrary to weight of evidence.

6. "EO NOMINE" PROVISION.

Imported SVPs come within common meaning of *eo nomine* provision for "electronic tubes" in item 687.60 as set forth by lower court.

7. ID.

Imported SVPs are described under item 685.90 as "apparatus * * * for the protection of electrical circuits."

8. RELATIVE SPECIFICITY.

Concerning issue of relative specificity between two competing TSUS items, the provision that more specifically describes the imported merchandise is the item having requirements which are more difficult to satisfy.

9. ID.

SVPs are described in item 685.90, TSUS, by their specific and only use (circuit protection); whereas, item 687.60 (electronic tubes) is not limited to any specific use requirement. Item 685.90 is more restrictive and difficult to satisfy; accordingly, SVPs are more specifically described in item 685.90.

10. ID. STATUTORY CONSTRUCTION.

In absence of legislative intent to the contrary, a product de-described by both a use provision and an *eo nomine* provision is generally more specifically provided for under the use provision. However, there is no requirement that this aid to statutory construction be automatically applied.

11. ISSUES OF UNIFORM PRACTICE AND RULE OF "STARE DECISIS" MUST BE DECIDED BY COURT OF INTERNATIONAL TRADE.

Two issues raised below but not reached, one concerning an alleged improper change in established and uniform practice regarding duty rate for SVPs and the other concerning *stare decisis*, must be decided by the lower court before they are reviewable here. Thus this matter is remanded.

UNITED STATES, APPELLANT *v.* SIEMENS AMERICA, INC, AND SIEMENS CORPORATION, APPELLEES

Appeal No. 80-33

SIEMENS AMERICA, INC, AND SEIMENS CORPORATION, APPELLANTS *v.* UNITED STATES, APPELLEE

Appeal No. 80-35

United States Court of Customs and Patent Appeals, June 25, 1981

Appeal from United States Customs Court, C.D. 4856

[Modified and Remanded]

Thomas S. Martin, Acting Asst. Atty. General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in charge, *Madeline B. Kuflik* attorneys for United States.

Louis Schneider, *Angela Pitsaris*, attorneys for Siemens.

[Oral argument on March 2, 1981 by *Madeline B. Kuflik* for United States and *Louis Schneider* for Siemens.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

BALDWIN, *Judge.*

This matter is before us on appeal by The United States (Government) and cross-appeal by Siemens America, Inc. and Siemens Corporation (collectively, Siemens) from the judgment of the United States Customs Court, now the United States Court of International Trade (court), 84 Cust. Ct., C.D. 4856, 496 F. Supp. 266 (1980). [1–2] The court held that all the imported merchandise, known as surge voltage protectors [1] (SVP), was improperly classified as "other electrical apparatus for the protection of electrical circuits" under item 685.90 of the Tariff Schedules of the United States (TSUS) and sustained Siemens' alternative claim for classification as "electronic tubes" under item 687.60, TSUS. The court also held that the SVPs containing Pm147 were not classifiable under item 709.66, TSUS, as "apparatus based on the use of radiations from radioactive substances," the provision Siemens had primarily claimed to be applicable. The rejection of classification under item 709.66 is the subject of Siemen's cross-appeal. We affirm the judgment of the court dismissing Siemens' claim under item 709.66, reverse the judgment of the court holding the SVPs properly dutiable under item 687.60, and remand this matter for further action consistent with this opinion.

Relevant Statutes; Customs Service Classification

SCHEDULE 6.—METALS AND METAL PRODUCTS

Part 5.—Electrical Machinery and Equipment

*	* * * * * * *	
685.90	Electrical switches, relays, fuses, lightning arresters, plugs, receptacles, lamp sockets, terminals, terminal strips, junction boxes and other electrical apparatus for making or breaking electrical circuits; for the protection of electrical circuits, or for making connections to or in electrical circuits, switchboards (except telephone switchboards) and control panels; all the foregoing and parts thereof----------	14, 12, 10, or 8% ad val depending on year of entry

[1] Some of the imported SVPs contained the radioactive substance promethium 147 (Pm147).

Siemens' Claim

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

Part 2.—Optical Goods; Scientific and Professional Instruments; Watches; Clocks, and Timing Devices; Photographic Goods; Motion Pictures; Recordings and Recording Media

* * * * * * *

Subpart B.—Medical and Surgical Instruments and Apparatus; X-Ray Apparatus

* * * * * * *

Apparatus based on the use of X-rays or of the radiations from radioactive substances, whether for medical, industrial, or other uses, and parts thereof:

* * * * * * *

709.66	Apparatus based on the use of radiations from radioactive substances, and parts thereof	9.5, 8, 7, or 6% ad val depending on year of entry

Siemens' Alternative Claim

SCHEDULE 6.—METALS AND METAL PRODUCTS

Part 5.—Electrical Machinery and Equipment

* * * * * * *

Electronic tubes (except x-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezo-electric crystals; all the foregoing and parts thereof:

* * * * * * *

687.60	Other	10, 8.5, 7, or 6% ad val. depending on year of entry

* * * * * * *

Part 5 headnotes:

1. This part does not cover—

* * * * * * *

(iv) electrical instruments and apparatus provided for in schedule 7.

BACKGROUND

The SVPs in issue are gas discharge tubes consisting of a hermetically sealed glass insulator filled with argon in which two electrodes are spacially set apart. Some of the imported SVPs contain a minute quantity of Pm147 within the glass insulator. To protect electrical circuitry from damage and to protect against injury to personnel, SVPs provide a conductive path for unwanted and excessive surges of voltage caused by lightning, powerline shorts and other sources.

At a specific voltage level known as the "breakdown voltage," SVPs will switch from a nonconductive state to a conductive state quite rapidly when subjected to an excessive voltage transient. Conduction occurs when the argon within the tube becomes ionized.

In the imported SVPs containing Pm147, the radioactive material emits radiation in the form of beta particles which preionizes or facilitates ionization of the argon thus stabilizing the breakdown voltage and increasing the speed of ionization. The breakdown voltage itself is a design parameter controlled primarily by the electrode spacing and gas fill pressure of the SVPs.

According to the court below, the record clearly established that the SVPs are used for the protection of electrical circuits and are described in item 685.90 as classified by the Customs Service (Customs). However, in accordance with headnote 1 (vi) of Schedule 6, Part 5, supra, classification under item 685.90 is precluded if the SVPs with Pm147 are described in item 709.66 as claimed by Siemens. The court stated that the "based on" language in item 709.66 evinced a "Congressional intent to embrace merchandise in which radiation from radioactive substances is its *sine qua non*." 496 F. Supp. at 269. From the evidence presented, the court found that the SVP's over-voltage protection function is not based upon the use of radioactive material, that the SVPs' argon ionizes irrespective of the presence of Pm147, that the speed of ionization and a specific breakdown voltage is achievable without the use of radioactive substances, and that the breakdown voltage is controlled by factors other than the presence of radiation. The court concluded that the inclusion of Pm147 in the SVPs was not essential to their basic function, that Pm147 was not a fundamental and essential constituent of the SVPs, and, therefore, that radiation is not the *sine qua non* of the SVPs in issue. Accordingly, item 709.66 did not describe the SVPs containing Pm147.

Siemens argues that since Pm147 serves to stabilize the SVP's breakdown voltage and since the breakdown voltage is an important SVP specification, the radiation from Pm147 in a SVP is an essential and fundamental determinant of SVP characteristics. Continuing, Siemens argues that the plain meaning of the words "based on" indicates that it is unnecessary that the sole characteristic of an apparatus derives from the radiation and that it is only necessary that the radiation be the underlying "basis" on which the apparatus is dependent which, according to Siemens, is clearly the case with its SVPs containing Pm147.

Concerning whether the SVPs are described in item 687.60, the court construed the statutory language of the *eo nomine* provision for "electronic tubes" in accordance with its common meaning. According to certain technical lexicographic authorities relied upon by the court, an "electron tube"[2] is defined in terms of rudimentary but essential features; i.e., an airtight enclosure, evacuated or gas-filled, providing a medium for the flow and conduction of electrons between two electrodes. Since the SVPs satisfied those basic criteria, the tubes are described in item 687.60. Additionally, the court found that the SVPs are "cold cathode tubes" which by definition are electron tubes.

The Government maintains that the common meaning definition of the term "electronic tube" used by the lower court is incomplete and, while describing the basic physical tube components, fails to include the unique functions for which electronic tubes were developed and for which they are known. The Government argues that the function of electronic tubes is based upon the controlled flow of electrons which enables electronic tubes to assist in the performance of various functions such as amplification, conversion of alternating current to direct current, detection, rectification, and the like; therefore, the definition of electronic tubes, according to the Government, must reflect the tube characteristic of ability to control the flow of electrons and various functions performed by various electronic tubes.

Next the court considered the relative specificity of items 685.90 and 687.60 in accordance with General Interpretative Rule 10(c), TSUS,[3] since both items describe the SVPs in issue. According to the court, the provision that more specifically describes the SVPs is the item having requirements which are more difficult to satisfy and that

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[2] The parties to this appeal do not dispute that the term "electronic tube" is synonymous with the term "electron tube."

[3] Rule 10(c) states in pertinent part that "an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it."

item is the *eo nomine* provision for electronic tubes since electronic tubes are "essentially one kind of device" (even though they perform a variety of functions) and circuit protector apparatus are "comprised of a number of highly diverse devices" which perform different functions in circuit protection and which have no common physical criteria.

The Government contends that the court erred in finding item 687.60 more specific than item 685.90 arguing that the court failed to apply a general rule of customs jurisprudence that goods described by both a use provision and an *eo nomine* provision are more specifically provided for under the use provision unless there is a clearly expressed legislative intent to the contrary. Under the application of that rule, item 685.90 ("other electrical apparatus for the protection of electrical circuits"), a use provision, is more specific than the *eo nomine* provision for "electronic tubes" (item 687.70).

The Government also argues that the court apparently determined relative specificity by merely counting the number of items of merchandise which are encompassed by the competing provisions and that this is an improper test. The proper test, according to the Government, is which provision is more specific with respect to the imported article irrespective of the number of articles comprehended by the competing provisions, and the more specific provision is the one having requirements which are more difficult to satisfy.

Since the court agreed with Siemens that item 687.60 is the applicable classification over item 685.90, it found no need to address two additional issues raised by Siemens, i.e., the SVPs were properly classifiable under item 687.60 since (1) there was an established and uniform practice by Customs of classifying SVPs under that provision which was changed without requisite notice in contravention of 19 U.S.C. 1315(d);[4] and (2) three "abstract" decisions of the court held the SVPs dutiable under item 687.60 rather than item 685.90 and the doctrine of *stare decisis* controls.

OPINION

The Item 709.66 Issue

[3] It is axiomatic that a statute must be construed to carry out legislative intent. To determine that intent, one must first look to the statutory language itself. See, *Intercontinental Fibers, Inc.* v. *United States*, 64 CCPA 31, C.A.D. 1179, 545 F. 2d 744 (1976). **[4]**

[4] § 1315(d) provides: "No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties or the imposition of countervailing duties under section 1303 of this title."

Doing so, we agree with the court below that the plain meaning of the "based on" language of item 709.66 evinces Congressional intent to limit the provision to goods in which the use of radiation is a fundamental and essential constituent. The use of radiation must be an indispensable requisite for the apparatus which, however, does not mean that the apparatus must be based solely on the use of radiation.

Thus, the issue here becomes whether or not the use of radiation from Pm147 in the imported SVPs containing such radioactive material is a fundamental and essential constituent of the SVPs.

The court below found as matters of fact that Pm147 is not a fundamental and essential consituent of the SVPs and that Pm147 radiation is not the *sine qua non* of the SVPs in issue. **[5]** A finding of fact of the court below will not be disturbed unless the finding is clearly contrary to the weight of the evidence. *Pharmacia Laboratories, Inc.* v. *United States*, 67 CCPA, C.A.D. 1236, 609 F. 2d 491 (1979). A review of the evidence of record clearly supports the findings concerning the role of Pm147 and its radiation in the operation of the SVPs. Siemens has not persuaded us otherwise.

The specific function of the SVPs is to provide a conductive path for excessive voltage transients. This function is determined by physical characteristics of the SVPs other than radiation from radioactive substances. Ionization and thus conduction occur regardless of the presence of radiation. The breakdown voltage is determined primarily by electrode spacing and gas fill pressure. The Pm147 radiations do not determine this breakdown voltage; the radiations merely help to stabilize it and increase the speed of ionization. In fact, some of the SVPs imported by Siemens contain no radioactive material. Thus we cannot agree with Siemens' argument that the Pm147 radiation is the "underlying basis" on which the SVP is dependent. Accordingly, we agree with the lower court that "it would require a substantial magnification of the role played by the promethium 147 to find that the SVP tubes are 'based on the use of radiations from radioactive substances,' within the purview of the statute." Therefore, we affirm the judgment of the court concerning the item 709.66 issue brought here on cross-appeal by Siemens.

The Item 687.60 Issue

[6] We agree with the lower court's determination of the common meaning of the *eo nomine* provision for "electronic tubes" in item 687.60 and that SVPs fall within that definition and, thus, within item 687.60. Finding no error in the court's disposition of the item

687.60 issue, we adopt that portion of the court's opinion, i.e., Section II, as our own.

The additional criteria desired by the Government require the definition of the term "electronic tube" to include not only electron flow control but also a limitation so that only those electronic devices which the ability to assist in various functions such as amplification, rectification, conversion, or the like and meet the basic physical configuration are encompassed by item 687.60 as electronic tubes. Such limitations are too restrictive and uncalled for in light of the technical authorities relied upon by the court below in determining the common meaning of the term "electronic tube."

The Relative Specificity Issue

[7] Since all the imported SVPs are described both under item 685.90 as "apparatus * * * for the protection of electrical circuits" and under item 687.60 as "electronic tubes," the issue of the relative specificity of the two competing provisions, as in the court below, must be reached.

[8] In accordance with General Interpretative Rule 10(c), supra note 3, the issue is which of the two competing provisions "most specifically describes" the SVPs. As this court has stated previously, and as the court below properly stated, the provision that more specifically describes the SVPs is the item having requirements which are "more difficult to satisfy." *Ozen Sound Devices* v. *United States*, 67 CCPA C.A.D. 1246, 620 F. 2d 880, 883 (1980).

Stating that *United States* v. *Ampex Corp.*, 59 CCPA 134, C.A.D. 1054, 460 F. 2d 1086 (1972) was "somewhat analogous"[5] and finding that electronic tubes are "essentially one kind of device" whereas apparatus for the protection of electrical circuits comprises "a number of highly diverse devices," the lower court determined that the "electronic tube" provision was "undoubtedly more restrictive and 'difficult to satisfy.' " *Siemens America*, 496 F. Supp. at 272. We disagree with that determination.

The SVPs are described in item 685.90 by their specific and only use, i.e., circuit protection. Item 687.60 is not limited to any such specific use requirement. Comparing the two competing provisions, both of which are quite broad in their reach, it is clear that the use provision, item 685.90, is "undoubtedly more restrictive and 'difficult to satisfy.' " Therefore, the SVPs are more specifically described in item 685.90.

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[5] While concerned with the issue of relative specificity, the *Ampex* case is of no assistance here since it did not involve an *eo nomine* provision in competition with a use provision. Additionally, the goods described in the more specific provision of *Ampex* (insulated electrical conductors) performed only one function, i.e., conveyance of electricity from one locus to another; whereas here the goods described in the lower court's more specific provision (electronic tubes) perform a "variety of functions."

Our conclusion concerning the relative specificity of the two competing provisions is supported by the general rule of construction that, in the absence of legislative intent to the contrary, a product described by both a use provision and an *eo nomine* provision is *generally* more specifically provided for under the use provision.[6] *Travenol Laboratories, Inc.* v. *United States*, 67 CCPA, C.A.D. 1247, 622 F. 2d 1027 (1980); cf. *United States* v. *Simon Saw & Steel Co.*, 51 CCPA 33, C.A.D. 834 (1964) (recognizing the general rule but finding the *eo nomine* provision in question to be more specific). In accordance with the construction aid, the SVPs in issue generally will be more specifically provided for under the use provision of item 685.90 as "other electrical apparatus * * * for the protection of electrical circuits" than under the *eo nomine* provision of item 687.60 as "electronic tubes."

Other Issues

Siemens had raised two additional issues in the court below, one concerning an alleged improper change in established and uniform practice regarding the duty rate to be applied to the SVPs and the other concerning *stare decisis*. Since the court agreed with Siemens that item 687.60 embraces the SVPs and is more specific than item 685.90, it found no need to reach these issues. However, we have disagreed with the court below by finding item 685.90 more specific than item 687.60. Therefore, these two additional issues need to be reached below before they are properly reviewable here. Thus, we remand this matter to the lower court for consideration of the two additional issues.

SUMMARY

We hold that the SVPs containing Pm147 are not classifiable under item 709.66 as "apparatus based on the use of radiations from radioactive substances." We also hold that although all the SVPs are "electronic tubes" within the meaning of item 687.60, item 685.90 ("other electrical apparatus * * * for the protection of electrical circuits") describes all the SVPs in issue more specifically than item 687.60. Accordingly, we *affirm* the judgment of the court below dismissing Siemens' claim under item 709.66 (Appeal No. 80–35); and we *reverse* the court's judgment holding the SVPs properly dutiable under item 687.60 (Appeal No. 80–33) and *remand* to the U.S. Court of International Trade for further action consistent with this opinion.

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[6] There is no requirement that this aid to statutory construction be *automatically* applied when one of the competing provisions is a use provision and the other an *eo nomine* provision. The aid is merely "*a convenient rule of thumb for resolving issues where the competing provisions are otherwise in balance.*" *Simon Saw & Steel Co.*, 51 CCPA 33, 40, C.A.D. 834 (1964) (emphasis in original). Thus the fact that the lower court did not automatically apply the rule is not reversible error *in and of itself* as the Government maintains.

UNITED STATES, appellant *v.* SIEMENS AMERICA, INC. AND SIEMENS CORPORATION, appellees

Appeal No. 80–33
C.A.D. No. 1266

SIEMENS AMERICA, INC. AND SIEMENS CORPORATION, appellants *v.* UNITED STATES, appellee

Appeal No. 80–35
C.A.D. No. 1266

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

NIES, *Judge*, with whom MARKEY, *Chief Judge*, joins, dissenting-in-part.

I disagree with the majority only respecting the relative specificity of items 687.60 and 685.90. Admittedly, this case presents a close question, but I see no error in the reasoning of the court below that it is more difficult to satisfy the requirements of a single kind of device (an electron tube) than it is to satisfy the requirements of *any one* of many different kinds of devices (fuses, circuit breakers, lightning arresters, insulators, transformers, carbon block assemblies, carbon arresters, gas tubes, neon bulbs, Zener diodes, varistors, selenium rectifiers, and so forth), especially considering that such highly diverse devices function differently and have no common physical criteria.

Since the *eo nomine* provision in item 687.60 for electronic tubes is more difficult to satisfy than the general catch-all, basket-like provision in item 685.90 covering "other electrical apparatus * * * for the protection of electrical circuits," the construction aid that a use provision is *generally* more specific than an *eo nomine* provision need not be used.

Accordingly, I would affirm the judgment of the Court of International Trade in its entirety.

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United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–53)

PASSPORT IMPORT CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Before BOE, Judge.

Court No. 76–5–01285

FOOTWEAR

[Judgment for defendant.]

(Decided June 15, 1981)

Doherty, Melahn and Middleton (*William E. Melahn* at the trial) for the plaintiff.
Stuart E. Schiffer, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Jerry P. Wiskin* at the trial), for the defendant.

BOE, *Judge*: In the above-entitled action the plaintiff contests the appraisement of certain footwear imported from Spain and entered at Boston, Massachusetts on or about February 20, 1975. The plaintiff contends that the prototypes selected by the Customs Service in making the appraisement of said merchandise do not meet the definition of "like or similar" products contemplated by the statutory provisions.

Presumably, due in part to the age which this action has been permitted to acquire, the witnesses presented by the plaintiff, consisting of the national import specialist of the United States Customs Service and the president of the plaintiff company, offer conflicting testimony with respect to the identity of the merchandise in question as entered on or about February 20, 1975. During the course of the trial the evidence principally related to the importation of merchandise described in the commercial invoices as footwear possessing crepe rubber soles. Exhibits 3A, 3B and Exhibit 4 were introduced by the plaintiff as illustrative of the imported merchandise which was appraised upon direction of the customs national import specialist on the basis of American Selling Price. The president of the plaintiff company, however, in his testimony maintained that the specific footwear, the appraisement of which he wished to protest, consisted of a "true espadrille" possessing a rope sole. No exhibits illustrative of footwear of this style or character were offered in evidence nor was any evidence, other than the somewhat dubious and conflicting testimony of plaintiff's president, offered to establish that the crepe rubber sole footwear, described in the commercial invoices, identified by the national import specialist and represented by Exhibits 3A, 3B and Exhibit 4, was not the imported merchandise in question entered on February 20, 1975.

The defendant's evidence in support of its alternative claim is cogent.

From the evidence adduced the court, accordingly, adopts the following:

FINDINGS OF FACT

I. The merchandise in issue consisting of footwear was exported from Spain on or about January 20, 1975, and entered at the port of Boston, Massachusetts on or about February 20, 1975.

II. The merchandise, referred to in plaintiff's complaint and described in the commercial invoices as "Tiller (Topside)" and "Sexton," include an upper of fabric twill and basket weaves and a sole of crepe rubber. Plaintiff's Exhibits 3A, 3B and Exhibit 4 are fair and accurate representations thereof.

III. Upon liquidation the imported merchandise described as the "Sexton" was appraised at $8.00, less two percent packed,

per pair; the merchandise described as the "Tiller (Topside)" was appraised at $6.75, less two percent packed, per pair, said appraisements having been made on the basis of American Selling Price in accordance with 19 U.S.C. § 1402(g).

IV. The imported merchandise is like or similar to the domestic footwear described as "Sandhopper" and "Crosswalk" manufactured by Uniroyal, Inc., Naugatuck, Connecticut, plaintiff's Exhibit 2 representing the said prototypes used in the appraisement of the subject merchandise.

V. All claims with respect to any imported merchandise, other than the "Sexton" and the "Tiller (Topside)," have been abandoned by the plaintiff.

VI. The imported merchandise is also similar to the domestic footwear described as "Daisy-Mae" and "Visa" manufactured by Oomphies, Inc., defendant's Exhibits C and D having been offered by defendant as representing said prototypes of the subject merchandise in support of its alternative claim.

VII. True espadrille footwear possessing rope soles is not the merchandise in question described in the commercial invoices in the instant action.

From the foregoing Findings Of Fact the court makes the following:

CONCLUSIONS OF LAW

I. The plaintiff has failed to rebut the presumption of correctness attached to the appraisement of the subject imported merchandise by the Director of Customs based on American Selling Price, 19 U.S.C. § 1402(g).

II. The District Director of Customs properly appraised and assessed duty upon the merchandise in question on the basis of American Selling Price.

Let judgment be entered accordingly.

(Slip Op. 81–54)

LIEBA, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 76–11–02408

Before FORD, Judge.

ARTICLES OF MANMADE FIBERS—BRISTLES

Polyvinyl chloride bristles approximately 4½ inches in length, *held* properly classifiable under item 389.60 (389.62), TSUS.

The claim for bristles under item 186.30 TSUS does not include

the imported merchandise since the legislative history indicates the intent of Congress to cover only natural bristles.

The imported bristles are flagged at one end which removes them from the category of manmade fibers.

The merchandise does not fall within the criteria in Schedule 7 since it is not tapered, is not within the maximum cross-section and is not composed of nylon.

[Judgment for defendant.]

(Decided June 15, 1981)

Burns, Doane, Swecker & Mathis (*William L. Mathis* on the briefs) for the plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Jerry P. Wiskin* on the briefs), for the defendant.

FORD, *Judge:* The parties to this action have cross moved for summary judgment under Rule 56. The imported bristles were classified under items 389.60 and 389.62 [1] of the Tariff Schedules of the United States. Plaintiff maintains the imported bristles are more specifically provided for alternatively under items 186.30, 309.43, 309.90 or 774.60 of the Tariff Schedules of the United States.

With respect to item 186.30, *supra*, it is the position of defendant that classification thereunder is precluded as a matter of law since said item is limited to products from animal or vegetable sources, and that the doctrine of similitude is inapplicable to plaintiff's claim under item 186.30. The flagging, defendant contends, constitutes a manufacturing process and accordingly items 309.43 and 309.90 do not cover the imported merchandise. Item 774.60, being a basket provision, is less specific according to defendant than the classified provision covering the imported merchandise.

The material issues of fact are not in controversy and the parties have agreed to the following:

1. The imported merchandise, assessed with duty at 15% ad valorem and 25¢ per lb. under item 389.60 and 389.62, TSUS, consists of brush bristles.

2. The imported brush bristles are in the form of monofilaments (excluding laminated and plexiform filaments) of polyvinyl chloride (a plastic material) being approximately 4½ inches in length.

3. The brush bristles are greater than 0.004 but not over 0.020 inch in maximum cross-sectional dimension.

4. The imported brush bristles have ends which are flagged and not tapered.

[1] Item 389.60, TSUS, was renumbered 389.62, TSUS, under Executive Order 11974, of February 25, 1977.

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5. The imported brush bristles are articles which consist wholly of manmade textile fibers in noncontinuous form and of a material other than nylon, shellac, copal, natural rubber, casein or a vulcanized fiber, and which fibers are not carded, combed or spun.

6. "Flagging" is a further manufacturing step.

The statutory provisions involved provide as follows:

10. *General Interpretative Rules.* For the purposes of these schedules—

* * * * * * *

(c) an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; but, in applying this rule of interpretation, the following considerations shall govern:

(i) a superior heading cannot be enlarged by inferior headings intended under it but can be limited thereby;

(ii) comparisons are to be made only between provisions of coordinate or equal status, i.e., between the primary or main superior headings of the schedules or between coordinate inferior headings which are subordinate to the same superior heading;

(d) if two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest, and, should the highest original statutory rate be applicable to two or more of such descriptions, the article shall be subject to duty under that one of such descriptions which first appears in the schedules;

* * * * * * *

Schedule 1, Part 15, Subpart D:

* * * * * * *

186.30	Bristles, crude, or processed in any way for use in bristles or other articles	0.75¢ per lb. Rate of duty modified by T.D. 68–9.]

* * * * * * *

Schedule 3 headnotes:

* * * * * * *

2. For the purposes of the tariff schedules—

(a) the term "*textile materials*" means—

(i) the fibers (cotton, other vegetable fibers, wool and hair, silk, and man-made fibers) provided for in part 1 of this schedule,

(ii) the yarn intermediates and the yarns provided for in part 1 and part 4 (elastic yarns) of this schedule,

(iii) the cordage provided for in part 2 and part 4 (elastic cordage) of this schedule,
(iv) the fabrics provided for in part 3 and part 4 of this schedule,
(v) braids, as defined in headnote 2(f), *infra*, and
(vi) except as provided by headnote 5, articles produced from any of the foregoing products;

* * * * * * *

Schedule 3, Part 1, Subpart E:

* * * * * * *

	Fibers (in noncontinuous form), whether known as cut fiber, staple, or by any other name, not carded, not combed, and not otherwise processed:	
	Wholly of filaments (except laminated filaments and plexiform filaments):	
*	* * * * * *	
309.43	Other	7.5% ad val. [Rate of duty modified by T.D. 68–9.]
	Textile fibers, of man-made fibers, carded, combed, or other processed but not spun:	
309.90	Wholly of man-made fibers	2.5¢ per lb.+ 7.5% ad val. [Rate of duty modified by T.D. 68–9.]

Schedule 3, Part 7, Subpart B:

* * * * * * *

Articles not specially provided for, of textile materials:

* * * * * * *

Of man-made fibers:

* * * * * * *

389.60 [389.62.]	Other	25¢ per lb.+ 15% ad val. [Rate of duty modified by T.D. 68–9.]

Schedule 7, Part 12, Subpart B:
Articles not specially provided for, of rubber or plastics:

* * * * * * *

774.60 Other ..... 8.5% ad val.

The classification of merchandise by the Customs Service is presumed to be correct. 28 U.S.C. 2635 (1976).[2] Accordingly, plaintiff has the dual burden of establishing the classification to be incorrect and affirmatively establish the correct classification.

The parties are in agreement that the imported polyvinyl chloride brush bristles are composed of plastic. Such merchandise falls within schedule 3, TSUS, *i.e.*, textile materials, if they fall within headnote 2(a), *supra*. This court in *R. H. Macy & Co., Inc.* v. *United States*, 62 Cust. Ct. 219, C.D. 3733, 297 F. Supp. 171 (1969), *aff'd*, 57 CCPA 115, C.A.D. 988, 428 F. 2d 856 (1970) made the following observation:

> * * * We are inclined to view that the term "plastic" as employed in part 12 of schedule 7 describes a form as well as a substance, and does not cover plastic materials which have been converted into textile materials.
>
> A yarn which was produced from a basic plastic substance has by that process of manufacture taken on the status of a textile material from which a textile product will be produced, and for tariff purposes may no longer be considered a "plastic" but rather a man-made fiber. (Cf. *Tide Water Oil Company* v. *United States*, 171 U.S. 210 and *L. Mendelson Co.* v. *United States*, 9 Cust. Ct. 256, C.D. 704.) Textile fibers (of which man-made fibers are one form) and products made therefrom are provided for in schedule 3 of the Tariff Schedules of the United States * * *. [P. 230.]

There is no dispute that the imported bristles are flagged at one end but not tapered. The flagging removes the merchandise from the category of manmade fibers per se, and brings it within the category of an article of manmade fibers which latter fact is conceded by plaintiff in its Memorandum in Opposition to Defendant's Cross Motion for Summary Judgment. It is apparent from a reading of Schedule 3 that said schedule is intended to include textile fibers and textile products. The court observes in the Tariff Classification Study (1960), Schedule 3, page 245, that item 389.60 was derived from paragraphs 1308 and 1312 of the Tariff Act of 1930, both of which cover articles of manufacture. Headnote 1 of Schedule 3, Part 7, Subpart B, reads as follows: "[t]his subpart covers articles of textile materials, not covered elsewhere in the tariff schedules". The above headnote together with the provisions following indicate the intent to make this subpart the basket provision of schedule 3. This headnote does not inure to the benefit of plaintiff since, as indi-

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[2] The presumption is Presently covered by 28 U.S.C. 2639(a)(1) (1980).

cated *infra*, the court is of the opinion that said merchandise is not provided for elsewhere in the tariff schedules. The court is aware of Headnote 1(x) of Schedule 3, Part 1, Subpart E which excludes "brush bristles provided for in part 12C of schedule 7. Defendant contends and plaintiff admits that the provision for brush bristles in schedule 7 does not cover the imported merchandise for the following reasons: (a) they are not tapered or within the maximum cross section as required in the superior heading; (b) they are not of nylon as required by item 773.15; (c) the bristles are not included within item 773.20 for "other" as they do not meet the requirements in the superior heading. Accordingly, plaintiff cannot benefit from the headnote.

Based upon the foregoing exclusions, it is plaintiff's position that since the imported bristles are excluded in 773.15 and 773.20, *supra*, it logically follows they are properly subject to classification under item 186.30 which is the only other provision for bristles. Defendant argues said provision covers only natural bristles and not those of man-made fibers. This position is borne out by the information contained in the Tariff Classification Study (1960), Schedule 1, Part 15, Subpart D, wherein the following is contained:

> Subpart D brings together provisions now included in 8 paragraphs covering certain feathers, downs, bristles, and hair, crude, sorted, or prepared for use in other articles. None of the provisions in subpart D involves duty changes, except item 186.30 which provides for bristles, crude, or processed in any way for use in brushes or other articles.
>
> Bristles, crude, not bunched, prepared, or sorted are currently free of duty under paragraph 1637 of the Tariff Act of 1930, whereas, bristles, bunched, prepared, or sorted are dutiable at 3 cents per pound under paragraph 1507. Virtually all imports have been bunched, prepared, or sorted, and are therefore dutiable. Inasmuch as the 3 cents per pound duty is insignificant (equal to 1.1 percent ad valorem on imports in 1957), the separate free provision for crude bristles has been dropped. Also the Cuban preference of 0.6 cent per pound has been eliminated. Imports from Cuba are very small and the ad valorem equivalent of the preference amounts to far less than one percent. All bristles, therefore, whether crude or prepared, and from whatever source are covered by item 186.30 at the rate of 3 cents per pound. [P. 254.]

All the articles covered by the study are natural, *i.e.*, feathers, hair and fur, not on the skin, as well as bristles. The only change in duty involved bristles which eliminated the provision for crude bristles which, under the Tariff Act of 1930, were entitled to entry free of duty. The court observes, as an historical fact, that bristles were first provided for as a dutiable article under the Tariff Act of 1816. It was not until the Tariff Act of 1894 that Congress provided for both

crude and processed bristles, and accorded free entry for the former and a dutiable status for the latter. Interestingly enough the same language was utilized in the dutiable provisions of the Tariff Act of 1894 and 1930 and the identical language was used in the free provision of said acts. Accordingly, the court is of the opinion that item 186.30 was intended to cover the importation of natural bristles.

Plaintiff's claims under items 309.43 and 309.90 are inapplicable. It is axiomatic in this field of jurisprudence that the Summaries of Trade and Tariff Information (1969), while not indicative of the intent of Congress, may serve as a useful tool in determining the scope of the provisions. *Hawaiian Motor Company* v. *United States*, 82 Cust. Ct. 70, C.D. 4790, 473 F. Supp. 787 (1979), *aff'd*, 67 CCPA —, C.A.D. 1241, 617 F. 2d 286 (1980). Said Summary makes the following comment:

> The products covered by this summary consist of noncontinuous manmade fibers, not corded, not combed, and not otherwise processed. The products are manufactured generally by cutting various forms of continuous manmade fibers (usually monofilaments, strips, or grouped filaments) into short lengths. * * *. [P. 75.]

The Summary continues and states with respect to item 309.90, TSUS:

> The manmade fibers covered herein are those which have been carded, combed, or otherwise processed but not spun into yarn. They are usually intermediate products used for the manufacture of spun yarn. Trade in such processed fibers consists almost entirely of sliver, roving, or top.
>
> * * * * * * *
>
> Sliver, a round strand of fibers loosely compressed together without twist, is condensed from the thin webs formed by carding machines. Roving is sliver usually put through draw frames to make the fibers more nearly parallel. Top is an untwisted strand of combed sliver of manmade fibers; it is also the product of direct-processing machines which use manmade grouped filaments as the raw material.
>
> Sliver is normally further processed within the establishment in which it is produced. The sliver that enters commerce and the sliver manufactured by direct-processing machines are usually shipped in cylindrical containers of various sizes. Roving is also primarily an intermediate operation in a yarn-spinning plant; that entering commerce is generally wound into bobbins with the use of flyers which insert a slight amount of twist. Top almost always enters trade channels; it is usually shipped in coiled form in cylindrical and square containers or in ball form, sometimes with one end flattened. [P. 109.]

It is apparent item 309.43 does not cover fibers which have been further processed, as exemplified by the flagging of the instant mer-

chandise. Likewise item 309.90 appears to encompass such articles as were intended to be used for the spinning of yarn. This is further borne out by the First Supplemental Report, which on page 24 in reference 12, eliminated "for spinning" and refers to reference No. 3 on page 20. Therefore items 309.43 and 309.90 do not encompass the imported merchandise.

Plaintiff further urges if the imported merchandise is not subject to classification under any of the foregoing, it is properly dutiable under item 774.60, which covers other articles, n.s.p.f., of rubber or plastic. While this provision contains a n.s.p.f. clause it is nonetheless more specific than the classified provision since the latter is further encumbered by Headnote 1 of Schedule 3, Part 7, Subpart B. The court finds item 389.62 to be more specific than item 774.60. The term "plastic" as determined by the court in *Macy, supra*, indicates that Schedule 7, while describing form and substance, does not cover plastic material which has been converted to textile materials. Additionally, regarding the question of relative specificity, the court in *Arthur J. Humphreys, Packard-Bell Electronics* v. *United States*, 56 CCPA 67, C.A.D. 956, 407 F. 2d 417 (1969), citing *United States* v. *Simon Saw & Steel Company*, 51 CCPA 33, C.A.D. 834 (1964), held the more specific provision is the one more difficult to satisfy. The definition of textile materials imposed by Headnote 2a of Schedule 3 has more stringent requirements and is therefore more specific.

Plaintiff urges in its brief but did not plead the issue of applicability to the similitude provision as it would apply to item 186.30. The law is well settled that claims not contained within the parameter of the pleading may not be considered. *United States* v. *E. H. Bailey & Co.*, 32 CCPA 89, C.A.D. 291 (1944).

Accordingly all claims of plaintiff are overruled. Judgment will be issued accordingly.

FRANKLIN INDUSTRIES, INC. PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 79-6-00958

Before RICHARDSON, Judge

ON PLAINTIFF'S MOTION AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

[Plaintiff's motion denied; defendant's cross-motion granted.]

(Decided June 18, 1981)

Paul F. Stack, Mark D. DeBofsky and *Stack & Filpi* for the plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Saul Davis* on the briefs), for the defendant.

RICHARDSON, *Judge*: In this action involving the importation from West Germany of a used Schiess MC WBF–19 horizontal boring mill ("Schiess mill") plaintiff has moved and defendant has cross-moved for summary judgment. The essential facts underlying the controversy are not in dispute.

Plaintiff purchased the boring mill in October 1977, in West Germany from Konrad Seidler for shipment to the United States. Owing to its size and weight [14.5′ high x 40′ long and 137,000 pounds] and the difficulty of obtaining booking for shipment the mill was disassembled and containerized except for one 30 foot long column, and the containers and column separated into two groups for separate shipment. Part of the mill, consisting of one 40 foot container and two 20 foot containers, was shipped on one vessel, and is covered by entry 114430, dated December 16, 1977, which is the subject of this action. And the remaining part, consisting of the column, was subsequently shipped on another vessel, and is covered by entry 115518, dated December 22, 1977, which has never been the subject of protest or a civil action. Upon entry at Chicago, Illinois, both entries were classified in liquidation under TSUS item 674.53 as parts of machine tools, other, at the duty rate of 7 *per centum ad valorem*.

On these facts plaintiff contends that the merchandise the subject of entry 114430 should have been classified as entered under TSUS item 674.32 as a boring machine [vertical spindle] at the duty rate of 6 *per centum ad valorem*. Plaintiff argues that the articles covered by this entry constitute an *entirety* owing to the difficulties encountered by plaintiff that necessitated separate shipment of parts of the mill, citing, among other things, *Daisy-Heddon, Div. Victor Comptometer Corp.* v. *United States*, 66 CCPA 97, 600 F. 2d 799, C.A.D. 1228 (1979).

Defendant contends that the holding in *Daisy-Heddon* is inapposite, and does not disturb the long settled rule that entry of parts of an article will not permit classification of the entered parts as an *entirety*, citing *Stella D'oro Biscuit Co., Inc.* v. *United States*, 65 CCPA 52, C.A.D. 1205, 570 F. 2d 945 (1978), aff'g. 79 Cust. Ct. 28, 33–34, C.D. 4709, 436 F. Suppl 398 (1977). Defendant argues that there is no such thing as an *unfinished entirety*.

The court agrees with defendant. Plaintiff concedes that prior to the decision of our appellate court in *Daisy-Heddon*, the doctrine of *entireties* was inapplicable when separate parts of a single article were imported in more than one shipment, calling attention to the holdings in *United States* v. *Baldt Anchor, Chain and Forge Div. of Boston Metals Co.*, 59 CCPA 122, C.A.D. 1051, 459, F. 2d 1403 (1972), and *Trans-World Shipping Service, Inc.* v. *United States*, 58 Cust. Ct. 120, C.D. 2900 (1967).

In *Baldt Anchor* our appellate court held that an importation of five of six machines which, together constituted a complete system of machines for the production of welded chain anchors, did not constitute an *entirety*. The court stated (p. 126):

> To hold that the bulk of the equipment, imported in one shipment, is an entirety of unfinished apparatus and that the remaining element of that equipment, imported in a separate shipment, is a part of that entirety, would greatly compromise the doctrine of entireties. If that were the law, once it was determined that assembled pieces of equipment constitute an entirety, the mere absence of some of those pieces, even though essential ones, from the shipment would not preclude its treatment as an entirety of "unfinished" apparatus and the missing pieces of equipment would be "parts" of that entirety. Clearly that is not the law. [Citation omitted.]

Plaintiff's reliance upon the recent decision of the Court of Customs and Patent Appeals in *Daisy-Heddon* to alter the holding of that court in *Baldt Anchor* is misplaced. Not only was *Baldt Anchor* not discussed in *Daisy-Heddon*, but *Daisy-Heddon* did not even involve the doctrine of *entireties*.

Daisy-Heddon involved the dutiable classification of *unfinished* fishing reels, and turned on the question of whether the imported articles were *substantially complete* in the condition and at the time imported. And the five determining factors [1] applied in *Daisy-Heddon* [not intended to be exhaustive] to which plaintiff calls attention and urges upon the court here, had a bearing in determining whether or not the reels were substantially complete so as to support classification of the unfinished articles as *reels* rather than as *parts* of reels as claimed. In the instant case the *used* mill is the very antithesis of an *unfinished* article such as that involved in *Daisy-Heddon*, because the mill represents a *finished* and *completed* article that was disassembled prior to importation—an entirely different state of facts than that dealt with in *Daisy-Heddon*.

There being no *entirety* present here, the principle of *Baldt Anchor* is controlling and must be followed. The customs service was correct in classifying the subject importation as *parts* of a machine under item 674.53.

Also, 19 U.S.C. 1500(d) mandates that each entry of merchandise be liquidated separately. The customs service cannot merge two distinct entries for purposes of liquidating two separate shipments of merchandise as an entirety.

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[1] i.e., (1) Comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and (5) trade customs, i.e., does the trade recognize the importation as an unfinished article or as merely a part of that article.

Plaintiff could have availed itself of an alternative in this case. As defendant suggests in its reply memorandum plaintiff might have sought to utilize the provisions of the Tariff Act of 1930, as amended, relating to the Foreign Trade Zone and Warehousing in order to achieve unitary classification of the boring mill even if it were obliged to dismantle the mill and ship parts of it at different times. See 19 U.S.C.A., section 81c and 1562.

For the reasons stated, plaintiff's motion is denied, and defendant's cross-motion is granted. Judgment will be entered accordingly.

(Slip Op. 81–56)

CARLISLE TIRE AND RUBBER COMPANY, PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 79–3–00423

Before MALETZ, Judge

ON PLAINTIFF'S MOTION AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

[Plaintiff's motion for summary judgment denied; defendant's cross-motion for summary judgment denied; and remand to the Secretary of Commerce ordered.]

(Dated June 19, 1981)

Eugene L. Stewart and *Daniel G. Rooney* for the plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Sheila N. Ziff* on the brief), for the defendant.

Lauren R. Howard; Collier, Shannon, Rill & Scott of counsel; for amicus curiae Bicycle Manufacturers Association of America, Inc.

MALETZ, *Judge:* Plaintiff, a domestic manufacturer of bicycle tires and tubes, challenges a negative countervailing duty determination published by the Secretary of the Treasury on January 8, 1979 involving bicycle tires and tubes from Taiwan. 44 F.R. 1815–16. The determination was rendered under section 303 of the Tariff Act of 1930, as amended (19 U.S.C. § 1303) as that provision existed prior to January 1, 1980.[1]

In substance, the Secretary found that the Taiwanese bicycle tire and tube manufacturers received benefits from the Government of Taiwan under programs providing for (1) a preferential income tax ceiling; (2) preferential export financing; and (3) deferred payment of duties on machinery and equipment imported into Taiwan. However, the Secretary further found "that the benefits involve an aggregate amount considered to be *de minimis* in size, and that therefore no

[1] January 1, 1980 was the effective date of the countervailing duty amendments made by the Trade Agreements Act of 1979. 93 Stat. 306–7 (1979).

bounty or grant is being paid or bestowed * * * within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) upon the manufacture, production or exportation of bicycle tires and tubes from the Republic of China." 44 F.R. at 1816. Specifically, the aggregate benefit found by the Secretary to be *de minimis* was 0.28 percent ad valorem.

Presently before the court are cross-motions for summary judgment. Plaintiff argues (1) that even a *de minimis* benefit must be countervailed; and (2) that the benefits received by the Taiwanese manufacturers were actually several times larger than those found by the Secretary. On the other hand, defendant argues that the *de minimis* rule is applicable to a countervailing duty determination and that the Secretary correctly determined the amount of the benefits.

I

We turn first to plaintiff's claim that even *de minimis* bounties and grants must be countervailed. Because the countervailing duty statute is mandatory in its terms, requiring the imposition of a duty in all cases where a bounty or grant was received by the foreign manufacturers, plaintiff reasons that the *de minimis* doctrine should play no role in the Secretary's decision as to whether duties are to be imposed. However, the *de minimis* doctrine is in fact applicable to even those statutes which, by their terms, apply in all cases. Illustrative is *N.L.R.B.* v. *Fainblatt*, 306 U.S. 601 (1939), where the Supreme Court, while holding that the National Labor Relations Act reached all businesses engaged in interstate commerce and embodied the full scope of Congress' power to regulate such commerce, nevertheless indicated that the *de minimis* doctrine was still applicable (id. at 607):

> The Act on its face thus evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce by the adoption of measures for the prevention or control of certain specified acts * * *. Examining the Act * * * we can perceive no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce affected *more than that to which courts would apply the maxim de minimis.* [Emphasis added.]

Further, the *de minimis* doctrine has been applied by this court to "mandatory" statutes requiring the collection of import duties. Thus, in *R. W. Gresham* v. *United States*, 3 Cust. Ct. 308, C.D. 263 (1939), the court observed that the case before it was one where the *de minimis* rule should be applied. In that circumstance, the court concluded that although certain imported flavoring contained alcohol, the amount "of alcohol * * * [was] not substantial enough to bring

this flavor[ing] within the provision" covering flavorings containing alcohol. *Id.* at 310. See also *Varsity Watch Co.* v. *United States*, 34 CCPA 155, 161–63, C.A.D. 359 (1947); *Genender Wholesale* v. *United States*, 1 CIT —, Slip Op. 81–40 at 4–5 (May 7, 1981).

Additionally, in *ASG Industries, Inc.* v. *United States*, 82 Cust. Ct. 101, 138, C.D. 4794, 467 F. Supp. 1200, 1231 (1979), *appeal dismissed*, June 18, 1980, this court, in the context of applying the countervailing duty statute before us here, stated:

> [T]he economic benefits extended * * * by the Italian Government are concededly "grants" within the dictionary meaning of that term *and are more than de minimis.* This being the case, whether or not their economic effect is to distort international trade or to induce exports is immaterial. For, as explained in detail, such a bounty or grant is within the reach of the countervailing duty law without regard to its trade effects. [Emphasis added.]

Similarly, in *ASG Industries, Inc.* v. *United States*, 67 CCPA —, C.A.D. 1237, 610 F. 2d 770 (1979), which specifically held that the countervailing duty statute was mandatory, the court in discussing the authority of the Secretary to waive imposition of a countervailing duty, indicated the applicability of the *de minimis* rule to the countervailing duty statute (67 CCPA at —, 610 F. 2d at 776):

> To permit the Secretary to avoid using his waiver authority (and to avoid having to find that a more than *de minimis* bounty or grant or its adverse effect has been eliminated or substantially reduced) by simply finding that, for purposes of 19 U.S.C. 1303, there is no bounty or grant * * * would * * * frustrate the congressional intent to tighten administration of the countervailingduty law. [Emphasis omitted.]

In short, there is clear precedent for applying the *de minimis* rule to "mandatory" statutes and the countervailing duty statute in particular. Considering that a *de minimis* benefit is, by definition, of no significance whatever, I see no reason to reject or limit the thrust of these cases. The court therefore holds that the *de minimis* doctrine is applicable to cases arising under the countervailing duty statute.

II

We consider next plaintiff's alternative argument that the Secretary's final determination seriously understated the value of the benefits received by the Taiwanese bicycle tire and tube manufacturers and that these benefits were more than *de minimis*.

By way of background, during the period covered by the countervailing duty investigation, the usual income tax rate paid by Taiwanese manufacturers was 35 percent of taxable income. However,

Article 10 of the Taiwanese Statute for Encouragement of Investment placed a limit on the tax rate to be applied to the income of qualifying firms. Five producers of bicycle tires and tubes in Taiwan benefited under this program and enjoyed a maximum tax rate of only 25 percent. Although the Secretary concluded that the ad valorem benefit of this program was only 0.27 percent, plaintiff contends that the actual benefit was 0.71 percent. At the heart of this difference is the question of whether the Secretary relied upon the correct figures in calculating the benefit of the lower tax rate.

The Secretary had two alternate sets of figures upon which he could have relied. One set, furnished by the Government of Taiwan in response to the Secretary's countervailing duty questionnaire, contained a table setting forth income tax data, the first column of which was headed "Value of Income Tax Ceiling of 25 percent." This table appears, on its face, to set forth the *value* and thus the benefit of the lower income tax rate for each firm.

For reasons unclear on the record, the Secretary chose not to rely upon the Government of Taiwan figures. Instead, the Secretary relied upon a set of figures provided by counsel for the Taiwan Bicycle Tire and Tube Manufacturers Association (the Association), which purport to represent the *actual tax paid* by each Taiwanese firm at the rate of 25 percent. Extrapolating from this second set of figures, the Secretary computed the ad valorem benefit of the lower rate.

Significantly, the second set of figures provided by the Association's counsel and relied upon by the Secretary, cannot be reconciled with the figures furnished by the Government of Taiwan. Thus, a comparison of the figures which the Association's counsel says represents the *actual tax paid* at 25 percent, with the figures the Government of Taiwan submitted as the *value* of being taxed at a lower rate, reveals that both sets of figures are virtually identical.

Put otherwise, the Government of Taiwan presented a figure for each producer; that amount was identified as the *value of the benefit* received by the particular firm. Counsel for the Association presented essentially identical figures but claimed that those figures represented the *actual income tax paid* as opposed to the value of the benefit.

Plaintiff alleges that the Secretary erred in relying upon the figures submitted by the Association's counsel and urges this court to treat the figures supplied by the Government of Taiwan as correct. Defendant counters by stressing, without clear support in the record, that there is a close relationship between counsel for the Association and the Taiwanese Government and that the figures provided by the Association are in effect a semi-official clarification of the figures provided

by the Government of Taiwan. Because of this, the argument proceeds, it was reasonable for the Secretary to rely upon the Association's figures.

The problem with defendant's argument, however, is that nothing in the record clearly indicates that the set of figures furnished by the Association's counsel is in fact a Taiwanese Government clarification of the prior figures. And even if the set of figures furnished by the Association could be traced to the Taiwanese Government, nothing in the record reveals which set of figures is correct. In short, the record reveals no satisfactory basis for the Secretary's choosing between the two sets of figures and his decision to rely upon the set of figures furnished by the Association rather than the figures furnished by the Government of Taiwan was therefore arbitrary. See, e.g., *National Citizens Com. For Broadcasting* v. *F.C.C.*, 555 F. 2d 938, 956 (D.C. Cir. 1977), *aff'd and rev'd in part on other grounds*, 436 U.S. 775 (1978); *Associated Indus. of N.Y.S., Inc.* v. *United States Dept. of Labor*, 487 F. 2d 342, 349–350 (2d Cir. 1973).

What is more, the Secretary's determination of the amount of the net bounty or grant, as well as his decision not to impose countervailing duties, is subject to *de novo* review. *ASG Industries, Inc.* v. *United States*, 67 CCPA at —, 610 F. 2d at 778–780. Thus a mere showing of reasonableness on the part of the defendant does not suffice to establish the correctness of the Secretary's determination. Here the presumption of correctness enjoyed by the Secretary's determination has been overcome by the existence of two sets of figures each of which casts grave doubt upon the other. Therefore, in view of the absence of clear evidence indicating which set of figures should have been relied upon, the court cannot approve the Secretary's findings as to the ad valorem benefit of the 25 percent tax rate. For the same reason, the court cannot accept plaintiff's computations which are based on the Taiwanese Government's figures.

III

Unresolved questions of material fact are also present with regard to the preferential export financing program. Under that program, the Government of Taiwan made available to exporters short-term financing at a specified below-market rate of interest. The data obtained by the Secretary as to this program did not indicate the amount of each loan and the actual duration of time it was outstanding. Nor did such data include the actual amount of interest paid either on a per loan, per manufacturer, or industry-wide basis. In the absence of such information it was not possible for the Secretary to determine

the benefit of this program to the Taiwanese manufacturer.[2] Because defendant as well as plaintiff base their computations on inadequate data, the court is unable to accept either party's conclusions as to the ad valorem benefit of this program.

It is thus apparent that the record does not contain sufficient information to enable the court to determine or reasonably estimate the amount of benefit received by the Taiwanese manufacturers, let alone decide whether or not that benefit is *de minimis*. In sum, neither party has demonstrated "what the truth is," and plaintiff's motion and defendant's cross-motion for summary judgment are therefore denied. *N.L.R.B.* v. *Smith Industries, Inc.*, 403 F. 2d 889, 893 (5th Cir. 1968).

IV

Given the denial of both parties' motions for summary judgment, the court could simply allow this action to proceed to trial. However, the court is also empowered under the Customs Courts Act of 1980 to remand this action for a redetermination of the ad valorem benefit received by the Taiwanese manufacturers. 28 U.S.C. §§ 2643(b) and (c) (1). See also, e.g., *ASG Industries, Inc.* v. *United States*, 1 CIT —, Slip Op. 81–34 (Apr. 24, 1981); *The Budd Company, Railway Division* v. *United States*, 1 CIT —, 507 F. Supp. 997 (1980). See also *SCM Corp.* v. *United States*, 84 Cust. Ct. 227, C.R.D. 80–2, 487 F. Supp. 96 (1980).

But the fact that this court may decide *de novo* the issues presented by this action does not mean that such a remand would be inappropriate. As was explained in *Douglas* v. *Hampton*, 512 F. 2d 976, 988 (D.C. Cir. 1975):

> "[j]udicial and administrative agencies 'are to be deemed collaborative instrumentalities of justice,' " and "[c]ourts have frequently called upon administrative bodies . . . for assistance in connection with issues falling within an area of administrative competence." The District Court stated that it was exercising its discretion in remanding the case in the interest of sound judicial administration, and we cannot say that the decision to do so was erroneous. * * * [Footnote omitted.]

See also *Bethlehem Steel Corporation* v. *Grace Line, Inc.*, 416 F. 2d 1096, 1108–1109 (D.C. Cir. 1969); *Atchison, Topeka and S.F. Ry. Co.* v. *Aircoach Transp. Ass'n*, 253 F. 2d 877, 885–86 (D.C. Cir. 1958), *cert. denied*, 361 U.S. 930 (1960).

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[2] It is true that the countervailing duty statute permits the Secretary to "determine, *or estimate*, the net amount of each * * * bounty or grant." [Emphasis added.] However, in the court's view, the Secretary should not resort to an estimate unless it is not reasonably possible to obtain the information necessary for a determination.

As the Supreme Court indicated in an analogous context: "Where suit is brought after the first administrative decision and stayed until remaining administrative proceedings have concluded, judicial resources are conserved and both parties fully protected." *United States* v. *Michigan National Corp.*, 419 U.S. 1, 6 (1974). Here, a new investigation may lead to a countervailing duty determination with which plaintiff agrees, thereby obviating the need for a trial. Also, "without an adequate factual record, [this court cannot] perform a meaningful judicial review of countervailing duty determinations." *ASG Industries, Inc.* v. *United States*, 67 CCPA at —, 610 F. 2d at 778. Remanding this action will insure that an adequate factual basis for resolution of this dispute will be presented to the court should this case eventually proceed to trial.

Given these circumstances, this action is stayed and the Secretary's negative countervailing duty determination is vacated. The action is remanded to the Secretary of Commerce [3] for further inquiries as may be needed to determine the ad valorem benefit provided the Taiwanese bicycle tire and tube manufacturers by the Government of Taiwan. The redetermination is to be made in accordance with the countervailing duty law in effect prior to January 1, 1980. See Pub. L. 96–39, Title X, §§ 1002(b) (1)(B) and (2), 93 Stat. 307. The Secretary is directed to report his redetermination to the court within 120 days of this order.

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[3] The functions of the Secretary of the Treasury under 19 U.S.C. § 1303 were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, January 2, 1980, 45 F.R. 993.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *July 1, 1981*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Investigation No. 731–TA–30 (Final)

UNREFINED MONTAN WAX FROM EAST GERMANY

AGENCY: United States International Trade Commission

ACTION: Scheduling of Prehearing Conference and Hearing

SUMMARY: The United States International Trade Commission hereby gives notice that the prehearing conference and hearing to be held in connection with the subject investigation are scheduled to begin at 9:30 a.m., e.d.t., on July 14 and at 10:00 a.m., e.d.t., on July 20, 1981, respectively, in the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Judith Case, Office of Investigations, U.S. International Trade Commission, Room 350, 701 E Street NW, Washington, D.C. 20426; telephone 202–523–0339.

SUPPLEMENTARY INFORMATION: On March 4, 1981, the Commission instituted a final antidumping investigation on unrefined montan wax from East Germany and scheduled a prehearing conference and hearing in connection with the investigation for May 21, and June 8, 1981, respectively (46 F.R. 18633). A staff report containing preliminary findings of fact was made available to all interested parties on May 20, 1981. On April 21, 1981, however, the U.S. Department of Commerce announced an extension of the investigation for up

to 60 days (46 F.R. 22778) and the Commission postponed its scheduled prehearing conference and hearing (46 F.R. 25376). Commerce will now make its final less-than-fair-value determination not later than July 17, 1981, and the Commission must make its final determination within 45 days after the final Commerce action. Accordingly, the Commission is rescheduling its prehearing conference for July 14, 1981, and its hearing for July 20, 1981.

Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.d.t.) on July 13, 1981. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend the prehearing conference at 9:30 a.m., e.d.t., on July 14, 1981, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements should be filed on or before July 15, 1981.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23). This rule requires that testimony be limited to a non-confidential summary and analysis of material contained in prehearing statements and to new information. The Commission will not receive prepared testimony for the public hearing, as would otherwise be provided for by rule 201.12(d). All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing statements in accordance with rule 207.22. Post-hearing briefs will also be accepted within a time specified at the hearing.

WRITTEN SUBMISSIONS: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, on or before July 15, 1981. All written submissions, except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts

A and C (19 CFR 207), and part 201, subparts A through E (19 CFR 201).

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 44 F.R. 76458).

By order of the Commission.

Issued: June 19, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN LARGE VIDEO MATRIX DISPLAY SYSTEMS AND COMPONENTS THEREOF	Investigation No. 337–TA–75

Notice of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order.

SUMMARY: On June 19, 1981, the Commission issued an Action and Order and Opinion in the above-captioned investigation. The Commission ordered that large video matrix display systems and components thereof, including spare parts, that infringe claims of U.S. Letters Patent Nos. 3,594,762; 3,941,926; or 4,009,335, and are manufactured by SSIH Equipment S.A., of Bienne, Switzerland, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, be excluded from entry into the United States for the remaining terms of said patents, except under license.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in connection with the importation into the United States and the sale therein of certain large video matrix display systems and components thereof. Notice was published in the Federal Register. 44 F.R. 75242 (Dec. 19, 1979).

At a public meeting on June 1, 1981, the Commission determined unanimously that there is a violation of section 337 in the unauthorized importation and sale of certain large video matrix display systems and components thereof that infringe the claims of U.S. Letters Patent Nos. 3,594,762; 3,941,926; and 4,009,335. The Commission determined unanimously that public interest considerations do not preclude the granting of relief in this case and determined by a vote of three to one

(Commissioner Stern dissenting) that the appropriate remedy is an order directing that the infringing articles manufactured by SSIH Equipment S.A. of Bienne, Switzerland, be excluded from entry into the United States for the remaining terms of the patents, except under license granted by the patent owner.

Copies of the Commission's Action and Order, Opinion, and all other nonconfidential documents in the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Michael B. Jennison, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

By order of the Commission.

Issued: June 19, 1981.

KENNETH R. MASON,
Secretary.

Investigation Nos. 701–TA–69 through 78 (Preliminary)

SODIUM GLUCONATE FROM BELGIUM, DENMARK, THE FEDERAL REPUBLIC OF GERMANY, FRANCE, GREECE, IRELAND, ITALY, LUXEMBOURG, THE NETHERLANDS, AND THE UNITED KINGDOM

Notice of Institution of Preliminary Countervailing Duty Investigations and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Belgium (Inv. No. 701–TA–69); Denmark (Inv. No. 701–TA–70); the Federal Republic of Germany (Inv. No. 701–TA–71); France (Inv. No. 701–TA–72); Greece (Inv. No. 701–TA–73); Ireland (Inv. No. 701–TA–74); Italy (Inv. No. 701–TA–75); Luxembourg (Inv. No. 701–TA–76); The Netherlands (Inv. No. 701–TA–77); and the United Kingdom (Inv. No. 701–TA–78) of sodium gluconate, provided for in item 437.52 of the Tariff Schedules of the United States.

EFFECTIVE DATE: June 16, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator (202–523–0439).

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted following receipt of a petition on June 16, 1981, filed by Pfizer, Inc., New York, New York. The petition alleges that the European Economic Community provides subsidies for the production and exportation of sodium gluconate, and that, by reason of imports of this allegedly subsidized product, an industry in the United States is being materially injured or threatened with material injury.

Authority. Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation by the administering authority. Such a determination must be made within 45 days after the date on which a petition is filed under section 702(b) or on which notice is received from the Department of Commerce of an investigation commenced under section 702(a). Accordingly, the Commission, on June 19, 1981, instituted preliminary countervailing duty investigations Nos. 701–TA–69 thru 78. These investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and particularly, subpart B thereof.

Written submissions. Any person may submit a written statement of information pertinent to the subject matter of these investigations to the Commission on or before July 20, 1981. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data". Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10:00 a.m., e.d.t., on July 14, 1981, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the Supervisory Investigator for these investigations, Mr. John MacHatton (202–

523–0439). It is anticipated that parties in support of the petition for countervailing duties and parties opposed to such petition will each be collectively allocated one hour withtin which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the Supervisory Investigator.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Issued: June 22, 1981.

KENNETH R. MASON,
Secretary.

[332–73]

NOTICE OF RELEASE FOR PUBLIC COMMENT OF PROVISIONALLY ADOPTED CHAPTERS OF THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

AGENCY: United States International Trade Commission.

ACTION: Release for public comment, pursuant to Commission investigation No. 332–73, under the authority of section 332 (g) of the Tariff Act of 1930, as amended, of drafts of the following chapters of the Harmonized Commodity Description and Coding System (Harmonized System) as provisionally adopted by the Harmonized System Committee and the Nomenclature Committee of the Customs Cooperation Council.

Chapter 39: Plastics and articles thereof
Chapter 40: Rubber and articles thereof
Chapter 50: Silk
Chapter 51: Wool, fine or coarse animal hair; horsehair yarn and woven fabric
Chapter 52: Cotton
Chapter 53: Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn
Chapter 54: Man-made filaments
Chapter 55: Man-made staple fibres
Chapter 56: Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof
Chapter 57: Carpets and other textile floor coverings
Chapter 58: Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery
Chapter 59: Impregnated, coated, covered or laminated textile fabrics; elastic textile fabrics; textile articles of a kind suitable for industrial use
Chapter 60: Knitted or crocheted fabrics

Chapter 61: Articles of apparel and clothing accessories, knitted or crocheted
Chapter 62: Articles of apparel and clothing accessories, not knitted or crocheted
Chapter 63: Other made up textile articles; Worn clothing and worn textile articles; rags
Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway track fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)
Chapter 87: Vehicles other than railway or tramway rolling-stock, and parts thereof
Chapter 88: Aircraft and parts thereof
Chapter 89: Ships, boats, and floating structures
Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof
Chapter 91: Clocks and watches and parts thereof
Chapter 92: Musical instruments; parts thereof
Chapter 96: Miscellaneous manufactured articles [1]
Chapter 97: Toys, games and sports requisites; parts thereof

WRITTEN SUBMISSIONS: Parties wishing to submit written comments should do so by July 30, 1981.

HEARING: Parties desiring the Commission to hold a hearing on these draft chapters of the Harmonized System should contact the Secretary of the Commission by July 15, 1981, and show good cause for holding a hearing.

COPIES OF DOCUMENTS: Copies of the chapters which are the subject of this notice are available for public inspection at the offices of the Commission, 701 E Street, NW., Washington, D.C. 20436. The Commission will also send ccpies to interested parties upon request.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, Telephone: 202/523–0370.

SUPPLEMENTARY INFORMATION: In its public notices of February 8, 1980 (45 F.R. 9828 of February 13, 1980), March 21, 1980 (45 F.R. 19696 of March 26, 1980), and August 15, 1980 (45 F.R. 55549 of August 20, 1980) the Commission identified 68 chapters of the Harmonized Commodity Description and Coding System (Har-

[1] Former chapters 95, 96, and 98.

monized System) for which texts had been provisionally adopted by the Harmonized System and Nomenclature Committees of the Customs Cooperation Council. The purpose of the above mentioned notices was to invite comments and views of interested parties with respect to the 68 chapters.

Since the release of the August 15, 1980 notice, provisionally adopted texts of 25 further chapters have been published by the Customs Cooperation Council. This notice hereby amends the previous notice by adding these 25 new chapter texts to the list of texts released for public comment.

This notice is being issued pursuant to Commission investigation No. 332–73, instituted on January 31, 1975 (40 F.R. 6329), under section 332(g) of the Tariff Act of 1930. The investigation was initiated in accordance with section 608(c) of the Trade Act of 1974, which provides, in part, that the Commission shall institute an investigation which would provide the basis for—

> (2) full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems [sic] Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices * * *.

The Harmonized System is being developed by the Customs Cooperation Council (CCC), a 91-member international organization with headquarters in Brussels, as an international commodity classification system which will be adaptable for modernized customs tariff nomenclature purposes and for recording, handling, and reporting of transactions in international trade. The Harmonized System will be based on, and in many respects will be an extension of, the Customs Cooperation Council Nomenclature (CCCN), formerly known as the Brussels Tariff Nomenclature (BTN).

The Technical Team, working under auspices of the CCC, prepared drafts of the various chapters of the Harmonized System for consideration by the Harmonized System Committee, which was established in order to develop the system. These drafts were forwarded to the members and observers of the Committee for their review and submission of written comments. The Committee met three times a year to consider these drafts and the written comments and presentations of the various delegations. The review of a particular chapter or group of chapters often extended to more than one meeting.

In its public notices of May 4, 1976 (41 F.R. 18716 of May 6, 1976), August 9, 1976 (41 F.R. 34370 of August 13, 1976), December 20, 1976

(41 F.R. 55948 of December 23, 1976), September 1, 1977 (42 F.R. 44852 of September 7, 1977), February 7, 1978 (43 F.R. 5902 of February 10, 1978), October 16, 1978 (43 F.R. 48723 of October 19, 1978), February 14, 1979 (44 F.R. 10435 of February 20, 1979), May 16, 1979 (44 F.R. 29740 of May 22, 1979), September 5, 1979 (44 F.R. 53112 of September 12, 1979), January 28, 1980 (45 F.R. 7648 of February 4, 1980), February 1, 1980 (45 F.R. 8168 of February 6, 1980), May 20, 1980 (45 F.R. 36231 of May 29, 1980), May 23, 1980 (45 F.R. 36230 of May 29, 1980), and August 20, 1980 (45 F.R. 57228 of August 27, 1980) the Commission identified those chapters which had been considered by the Harmonized System Committee, and the chapters for which a Technical Team draft had been released.

Following its deliberations on the draft chapters, the Harmonized System Committee forwarded recommended texts for the chapters to the Nomenclature Committee. The Nomenclature Committee, which supervises the operations of the Convention on Nomenclature for the Classification of Goods in Customs Tariffs and is responsible for ensuring international uniformity in the interpretation and application of the CCCN, reviews the recommended texts for the Harmonized System and returns the draft chapters which it has approved to the Harmonized System Committee. The draft chapters which have thusly been provisionally approved by both committees are then held in abeyance pending final revision sessions. The Harmonized System Committee began final revision sessions in May 1981.

The draft chapters released for public comment today have been provisionally adopted by the Harmonized System Committee and the Nomenclature Committee according to the above described procedure and are on the Harmonized System Committee's agenda for the October 1981 revision session. As further chapters are adopted, the Commission will issue future notices requesting public comment.

In 1971, the Department of the Treasury established an Interagency Advisory Committee on Customs Cooperation Council Matters in order to provide a basis for interested Federal agencies to participate with respect to CCC matters. In order to establish and develop U.S. programs and policies with respect to the Harmonized System, the interagency committee has instituted procedures which take into account the provisions of section 608(c) of the Trade Act of 1974, which call for the Commission to contribute to the U.S. technical input to the Harmonized System Committee. Under these procedures the Commission is preparing technical comments and proposals on the various chapters of the Harmonized System for consideration by the interagency committee in the determination of U.S. proposals with respect to the Harmonized System. In making proposals, the Commission is seeking and taking into consideration the views of

trade and industry and other interested parties and of interested Government agencies.

By order of the Commission.

Issued: June 24, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN HEADBOXES AND PAPERMAKING MACHINE FORMING SECTIONS FOR THE CONTINUOUS PRODUCTION OF PAPER, AND COMPONENTS THEREOF	Investigation No. 337–TA–82A

Notice of Investigation, Scope and Procedures for Conduct of Investigation, Schedule for Filing Written Submissions on Relief, Bonding, and the Public Interest, and Requesting a Public Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337; request for written submissions regarding relief, bonding, and the public interest.

SUMMARY: On March 23, 1981, the Commission determined by a 3-tc-1 vote (Commissioner Stern dissenting) that there is a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain multi-ply headboxes and papermaking machine forming sections for the continuous production of paper and components thereof which infringe and contribute to or induce the infringement of claims 1, 12, 15, 16, and 22 of U.S. Letters Patent RE 28,269 and claims 4, 5, and 6 of U.S. Letters Patent 3,923,593, the tendency of which is to substantially injure a domestic industry efficiently and economically operated in the United States. Having also determined that the statutory public-interest considerations did not preclude relief and that an exclusion order was the appropriate remedy, the Commission subsequently issued an order barring the subject merchandise from entry into the United States for the remaining term of the patents, except under license, but permitting the excluded articles to enter under a 100 percent *ad valorem* bond until such time as the President approved or disapproved the Commission's action. (46 F.R. 22083; see also USITC Publication 1138 (April 1981).) [1]

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[1] Chairman Alberger dissented from the majority's remedy determination, stating that a cease and desist order directed solely to the respondents found to be in violation would be more appropriate. See the Views of Chairman Bill Alberger regarding Remedy and the Public Interest, USITC Publication 1138 (April 1981).

On June 8, 1981, the President disapproved the Commission's determination for policy reasons relating to the scope of the exclusion order and its potential adverse impact. Although the President disapproved the Commission's determination, he pointed out that such disapproval did not mean that the patent holder was not entitled to relief, and that an exclusion order directed only to the products of the respondents or a narrowly drawn cease and desist order would have been justifiable and appropriate in light of the facts and circumstances in this case. Lacking the authority to revise the Commission's remedy, the President urged the Commission to take such action expeditiously on its own initiative. (See 46 F.R. 32361.)

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.10(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.10(b)).

SCOPE OF THE INVESTIGATION: As a result of the President's disapproval of the Commission's determination in the matter of certain headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof, investigation No. 337–TA–82, and on the basis of the recommendation contained in the statement of disapproval, on June 23, 1981, the U.S. International Trade Commission ordered (Commissioner Stern dissenting) that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unauthorized importation of certain headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof, into the United States, or in their sale, because (1) such headboxes and papermaking machine forming sections are allegedly covered by claims 1, 12, 15, 16, and 22 of U.S. Letters Patent RE 28,269, claims 4, 5, and 6 of U.S. Letters Patent No. 3,923,593, and (2) such components allegedly contribute to and induce infringement of the aforementioned claims of the patents, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—
Beloit Corporation
1 St. Lawrence Avenue
Beloit, Wis. 53511

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the notice of investigation is to be served:

Aktiebolaget Karlstads
Mekaniska Werkstad
Fack S–651 01,
Karlstad, Sweden

KMW Johnson, Inc.
5821 Park Road
Charlotte, N.C. 28209

(c) Louis S. Mastriani, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 132, Washington, D.C. 20436, shall be the Commission Investigative Attorney, and a party to this investigation.

SUPPLEMENTARY INFORMATION:

(1) The new investigation encompasses the same issues, parties, and subject matter as investigation No. 337–TA–82, except that—

(a) in the absence of new allegations of section 337 violations, or new evidence regarding the allegations which were the basis of investigation No. 337–TA–82, the new inquiry shall be limited to the issues of the appropriate remedy, the public interest, and the value of the bond, if any, which should be imposed during the 60-day period for review by the President,

(b) Scott Paper Co., a nominal participant and respondent in investigation No. 337–TA–82, has not been named as a party to the new investigation, and

(c) the only respondents are the KMW companies listed above.

(2) The evidence and information concerning the elements of a section 337 violation, (i.e., the unfair trade practices and unfair methods of competition alleged, the domestic industry affected, the efficiency and economy of its operations, and the effect or tendency of the unfair acts and methods to destroy or substantially injure the domestic industry) which are on the record developed during the course of investigation No. 337–TA–82, shall be incorporated into the record developed in this new proceeding by reference.

(3) No issue concerning the violation of section 337 which was previously addressed in connection with investigation No. 337–TA–82, shall be relitigated by the parties unless—

(a) within twenty (20) days after the date on which the new investigation is instituted, a party files a petition which either alleges new violations of section 337 or presents new evidence concerning the

previously alleged violation and shows good cause for relitigating the issues in question, and

(b) the Commission grants the petition.

Written Submissions on Remedy, Bonding, and the Public Interest

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondents being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public-interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury.

In order to give greater focus to the Commission's deliberations in connection with this investigation, interested members of the public and other government agencies are invited to submit written comments and the parties to the investigation and the Commission investigative attorney are required to file briefs discussing (1) the appropriate remedy, if any, (2) the impact that such relief would have upon the public-interest considerations enumerated above, and (3) the amount of the bond, if any, which should be imposed during the 60-day period for the President to review the Commission's determination.

Request for Hearing

No public hearing is presently scheduled in this matter, however written requests for such a hearing will be considered by the Commission. Such requests must be received by the Office of the Secretary within 2 weeks after the date on which this notice is published. The requests must state in detail the reasons why a hearing is necessary and the reasons why the issues in question cannot be addressed adequately by means of written submissions. If the Commission grants

such requests, the hearing will be held on or about Tuesday, August 18, 1981.

ADDITIONAL INFORMATION: The original copy and 11 true copies of all written comments and briefs must be filed with the Office of the Secretary no later than August 11, 1981. Any person desiring to discuss confidential information at the hearing (if such proceedings are requested and the Commission grants the request), or to submit a document (or a portion thereof) to the Commission in confidence, must request *in camera* treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for *in camera* treatment will be treated accordingly. All nonconfidential written submissions filed pursuant to this notice, as well as all nonconfidential documents on the record of investigation No. 337–TA–82 in the matter of certain headboxes and papermaking machine forming sections for the continuous production of paper, and components thereof will be available for public inspection at the Secretary's Office during official business hours (8:45 a.m. to 5:15 p.m.).

FOR FURTHER INFORMATION CONTACT: Louis S. Mastriani, Esq., U.S. International Trade Commission, telephone 202–523–0489.

By order of the Commission.

Issued: June 24, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN COIN-OPERATED AUDIO-VISUAL GAMES AND COMPONENTS THEREOF

Investigation No. 337–TA–87

Notice of Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of exclusion order

SUMMARY: On June 25, 1981, the Commission issued an Action and Order and Opinion in the above-captioned investigation. The Commission ordered that certain coin-operated audio-visual games kits and components thereof which infringe complainants copyright or common-law trademark or bear false designation of origin be excluded from entry into the United States.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation and published notice thereof in the Federal Register of June 25, 1981 (45 F.R. 124) to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in connection with the importation into the United States and the sale therein of certain coin-operated audio-visual games, kits and components thereof.

On June 9, 1981, at a public meeting, the Commission unanimously determined that there is a violation of section 337 in the unauthorized importation and sale of certain coin-operated audio-visual games, kits and components thereof which infringe complainant's copyrights or common-law trademark, or bear false designation of origin. The Commission determined that the appropriate remedy is an order directing that the articles in question be excluded from entry into the United States.

Copies of the Commission's Action and Order, the Commission Opinion, and any other public documents on the record in this investigation are available for inspection by the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

By order of the Commission.

Issued: June 25, 1981.

KENNETH R. MASON,
Secretary.

Notice of Investigation (332–128)

THE IMPLICATIONS OF RECENT TECHNOLOGICAL CHANGES ON WATCH PRODUCTION

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), the Commission has instituted investigation No. 332–128 for the purpose of gathering and presenting information on the implications of technological changes on watch production. The emergence of electronic watches is having an impact on the entire watch industry and on conditions of competition and trade patterns in these products. This study will highlight recent developments in the watch industry, such as the introduction of low-priced quartz analog watches and significant drop in U.S. production

of all watches, and will show the effect of these developments on the watch assembly industry in the U.S. Insular Possessions.

EFFECTIVE DATE: June 22, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Trezevant or Mrs. Cynthia Wilson, General Manufactures Division, U.S. International Trade Commission, Washington, D.C. 20436 (Phone 202–724–1719 or 202–724–1731).

WRITTEN SUBMISSIONS: Since there will be no public hearing scheduled for this study, written submissions from interested parties are invited concerning any phase of the study. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than November 15, 1981. All submissions should be addressed to the Secretary of the Commission's office in Washington, D.C.

By order of the Commission.

Issued: June 25, 1981.

KENNETH R. MASON,
Secretary.

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